

11747-PAJ

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|--------------------------|
| ----- | X | |
| ST. PAUL TRAVELERS INSURANCE COMPANY | : | |
| LTD., | : | |
| | : | |
| Plaintiff, | : | |
| v. | : | |
| | : | 08 CIV 410 (JGK) |
| M/V “MADAME BUTTERFLY,” its engines, tackles, | : | |
| boilers, etc., <i>in rem</i> ; | : | |
| WALLENIOUS WILHELMSSEN LOGISTICS A/S; | : | |
| WALLENIOUS WILHELMSSEN LOGISTICS, INC.; | : | ANSWER TO |
| WALLENIOUS WILHELMSSEN LOGISTICS | : | CROSS-CLAIM |
| AMERICAS LLC; | : | OF OST TRUCKS AND |
| OST TRUCKS AND CRANES, INC.; | : | CRANES, INC. |
| PACIFIC RO RO STEVEDOING, INC.; | : | |
| PACIFIC RO RO STEVEDORING LLC; & | : | |
| PARSIFAL SHIPPING LTD., <i>in personam</i> , | : | |
| | : | |
| Defendants. | : | |
| ----- | X | |

Defendants, WALLENIOUS WILHELMSSEN LOGISTICS A/S; WALLENIOUS WILHELMSSEN LOGISTICS AMERICAS LLC; and PARSIFAL SHIPPING LTD., as owner of the M/V “MADAME BUTTERFLY,” its engines, tackles, boilers, etc., (collectively “WWL”), by their attorneys, JUNG & MELE, LLP, answering the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC., respectfully allege as follows:

1. WWL denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 4, 5 and 7 of the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC.

2. WWL denies the allegations contained in paragraphs 3 and 6 of the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC.

ANSWERING THE FIRST CAUSE OF ACTION

3. WWL denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC.

4. WWL denies the allegations contained in paragraphs 9, 10, 11 and 12 of the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC.

ANSWERING THE SECOND CAUSE OF ACTION

5. WWL repeats and re-alleges each and every admission and denial set forth above in paragraphs 1 through 4 of this Answer to the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC., as if more fully set forth at length herein.

6. WWL denies the allegations contained in paragraph 14 of the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC.

ANSWERING THE THIRD CAUSE OF ACTION

7. WWL repeats and re-alleges each and every admission and denial set forth above in paragraphs 1 through 6 of this Answer to the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC., as if more fully set forth at length herein.

8. WWL denies the allegations contained in paragraphs 16 and 17 of the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC.

ANSWERING THE FOURTH CAUSE OF ACTION

9. WWL repeats and re-alleges each and every admission and denial set forth above in paragraphs 1 through 8 of this Answer to the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC., as if more fully set forth at length herein.

10. WWL denies the allegations contained in paragraphs 19, 20 and 21 of the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC.

ANSWERING THE FIFTH CAUSE OF ACTION

11. WWL repeats and re-alleges each and every admission and denial set forth above in paragraphs 1 through 10 of this Answer to the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC., as if more fully set forth at length herein.

12. WWL denies the allegations contained in paragraphs 23, 24 and 25 of the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC.

ANSWERING THE SIXTH CAUSE OF ACTION

13. WWL repeats and re-alleges each and every admission and denial set forth above in paragraphs 1 through 12 of this Answer to the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC., as if more fully set forth at length herein.

14. WWL denies the allegations contained in paragraphs 27, 28, 29, 30 and 31 of the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC.

ANSWERING THE SEVENTH CAUSE OF ACTION

15. WWL repeats and re-alleges each and every admission and denial set forth above in paragraphs 1 through 14 of this Answer to the Cross-Claim of co-Defendant,

OST TRUCKS AND CRANES, INC., as if more fully set forth at length herein.

16. WWL denies the allegations contained in paragraphs 33, 34, 35 and 36 of the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC.

**AS AND FOR ITS AFFIRMATIVE DEFENSES,
WWL ALLEGES AS FOLLOWS:**

FIRST AFFIRMATIVE DEFENSE

17. The Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC., fails to state causes of action or fails to state claims upon which relief can be granted as against WWL.

SECOND AFFIRMATIVE DEFENSE

18. The claims alleged in the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC. arose from the fault, neglect, negligence, and breach of express or implied contract of co-Defendants or other entities.

THIRD AFFIRMATIVE DEFENSE

19. Since carriage of the subject cargo was effected pursuant to the United States Carriage of Goods by Sea Act of 1936, or other statutory enactment, WWL is either without responsibility or its liability is limited by the \$500 package limitation, one-year suit time limitation, or other statutory limitation of liability, for the loss or damage alleged.

FOURTH AFFIRMATIVE DEFENSE

20. WWL assumed no obligations or responsibilities other than provided for

in the governing ocean bill of lading referenced above, and is further entitled to all defenses under the bill of lading including, but not limited to, the \$500 package limitation, one-year suit time limitation, and other limitations on liability.

FIFTH AFFIRMATIVE DEFENSE

21. Any loss or damage to the subject cargo was due to inherent vice, acts of the shipper, consignee or owner of the cargo, or other deficiencies for which WWL is not responsible.

SIXTH AFFIRMATIVE DEFENSE

22. If Plaintiff sustained any losses, said losses arose out of and were caused by risks, dangers and hazards, all of which were open, obvious and assumed by shipper, consignee or owners of the cargo.

SEVENTH AFFIRMATIVE DEFENSE

23. If Plaintiff sustained any loss or damages, said damages were caused by the negligence of the shipper, consignee or owner of the cargo, their agents, servants or employees, and were not caused or contributed to in any manner by the alleged negligence, breach of express or implied contract or breach of warranty of WWL.

EIGHTH AFFIRMATIVE DEFENSE

24. Plaintiff and/or the shipper, consignee or owner of the cargo failed to take reasonable steps to minimize the alleged damages.

NINTH AFFIRMATIVE DEFENSE

25. Plaintiff's claims and causes of action against the co-Defendants, OST TRUCKS AND CRANES, INC., PACIFIC RO RO STEVEDOING, INC. and PACIFIC RO RO STEVEDORING LLC, violates and is in breach of Clause 16 ("Agreement to Claim Against No One Other Than the Carrier") of the governing ocean bill of lading, referenced above, which limits cargo damage claims or suits to no other party than WWL, and as such, the claims and causes of action asserted against said co-Defendants must be dismissed.

TENTH AFFIRMATIVE DEFENSE

26. Pursuant to Clause 15 ("Sub-Contractors and Himalaya Clause") of the governing ocean bill of lading, referenced above, Plaintiff's claims and causes of action against the co-Defendants, OST TRUCKS AND CRANES, INC., PACIFIC RO RO STEVEDOING, INC. and PACIFIC RO RO STEVEDORING LLC, are subject to the same defenses and limitations, including the package limitation, available to WWL.

ELEVENTH AFFIRMATIVE DEFENSE

27. If WWL is found liable to Plaintiff in this action by way of verdict, judgment or settlement, such liability, if any, in whole or in part, would be due to the active and primary fault, neglect and negligence and/or breach of express and implied contract on the part of the co-Defendant, OST TRUCKS AND CRANES, INC., without any fault, neglect, negligence and/or breach of express or implied contract by WWL contributing thereto.

TWELFTH AFFIRMATIVE DEFENSE

28. WWL is entitled to indemnification and/or contribution from co-Defendant, OST TRUCKS AND CRANES, INC., for any such verdict, judgment or settlement which may be rendered against it, including reasonable counsel fees necessary to defend this action.

WHEREFORE, WWL demands that the Cross-Claim of co-Defendant, OST TRUCKS AND CRANES, INC., be dismissed with costs to WWL and against co-Defendant, OST TRUCKS AND CRANES, INC., including reasonable counsel fees necessary to defend this action, and that the Court grant such other, further and different relief as the justice of the cause may require.

Dated in the City of New York on March 6, 2008

Respectfully submitted,

JUNGE & MELE, LLP
Attorneys for Defendants
Wallenius Wilhelmsen Logistics A/S
Wallenius Wilhelmsen Logistics Americas LLC &
Parsifal Shipping Ltd., as Owner of the
M/V "Madame Butterfly"

/s/ Peter A. Junge

By: _____
Peter A. Junge (PJ-0745)
29 Broadway - 9th Floor
New York, NY 10006
(212) 269-0061